THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

On Monday, the twelfth day of September,

two thousand and five.

W.P.No.3365 of 1996

Arumilli Sriram, s/o Subbarao, Nagapur.

Petitioner.

And:

The District Collector (LR), Kakinada, E.G.District, & 3 others.

Respondents.

O R D E R:

Alleging that he is the owner and possessor of Ac.3.43 cents in various Survey Numbers situated in Manepalle, Mondepulanka and Bellampalli villages of P.Gannavaram Mandal, which is his ancestral property, and that his father with a view to cause harm to him, in view of the disputes between them, taking advantage of the fact that he is residing at Nagapur, seems to have shown the said lands also in the declaration filed by him under the provisions of Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act') and later proposed to surrender those lands during surrender

proceedings and that he, after coming to know about the said fact during his visit to the native place for Sankranthi vacation that revenue authorities are going to take possession of the said lands, made a request to the Collector (first respondent) to cause an enquiry and got filed a petition to reopen the declaration filed by his father under the provisions of the Act before the Additional Revenue Divisional Officer (3rd respondent), and since he (3rd respondent), did not pass any orders on the application filed by him, petitioner filed this petition seeking a direction to the respondents not to assign his above land of Ac.3.43 cents to any body.

2) The case of the respondents, as disclosed from the counter affidavit of the Revenue Divisional Officer (2nd respondent) is that the father of the petitioner filed a declaration on behalf of his family unit consisting of himself, his wife, minor son (petitioner) and minor daughter under the provisions of the Act in LCC No.555/RZO/75 and was held to be holding 0.3969 SH in excess of the ceiling area and so a notice under Form-VI under Rule 7(1) of the A.P.Land Reforms Rules, 1974 (the Rules) was issued to him, and since he failed to exercise his option the lands, now being claimed by the petitioner as his, were provisionally selected for surrender by the third respondent and so notice dated 14.6.1994 to surrender those lands was served on the father of the petitioner on 25.6.1994, and since he did not file any objection thereto, on the report of the Mandal Revenue Officer (4th respondent), that those lands are free from encumbrance, public notice in Form-VIII was published and since no objections were received thereto, 3rd respondent had on 16.1.1995 passed orders, under Section 10(4) of the Act, to take possession of the said lands and so the Mandal Revenue Inspector took possession of the said lands in the presence of mediators and also in the presence of the father of the petitioner on 2.2.1995, and handed them over to the Village Administrative Officers for safe custody, and so the petitioner, who was aged about 7 years by the date of declaration filed by his father, is not entitled to any relief.

3) The contention of the learned counsel for the petitioner is that since the father of the petitioner, with a view to defraud the petitioner, had falsely shown and surrendered the lands belonging to the petitioner in the proceedings under

the Act, petitioner, immediately after coming to know about the said fact, made a representation to the 1st respondent, who, according to the counter affidavit filed on behalf of the respondents, is said to have directed his subordinate officials to make an enquiry, and those officers seems to have submitted a report to the first respondent and since a copy of that report is not furnished to the petitioner, petitioner is not aware of the contents of that report and since the Court is also kept in dark about that report, respondents may be restrained from assigning the lands of the petitioner to anybody to protect the interest of the petitioner.

4) The contention of the learned Assistant Government Pleader is that since the petitioner, who, by the date of filing of the declaration by his father, was a minor, is not entitled to any relief because even assuming that there was a partition between the petitioner and his father, because he (petitioner), as the minor son of his father, also would be a member of his family unit as per Sec.3(f) of the Act, and since question going into the validity of surrender cannot be decided in a writ petition.

5) Failure of the first respondent in furnishing a copy of the report submitted by his subordinate officials on the remarks called by him on the representation of the petitioner, is of no consequence for disposal of this petition, because neither the petition of the petitioner nor the remarks of the subordinate officials of the first respondent, have relevance, since first respondent cannot set at naught an order passed by the 3rd respondent under the Act and the Rules there under.

6) In the affidavit of the petitioner, filed in support of this petition, sworn to by him on 19.2.1996, he described himself as a person aged 29 years. So, he must have been born in or around 1967, and so by 1.1.1975 i.e. the date of coming into force of the Act, he must be aged around 8-years. From the documents filed along with the counter affidavit filed on behalf of respondents, it is seen that in the declaration of the lands held by his family unit, filed by the father of the petitioner, it was ultimately held that the total extent of the land held by his family unit was 1.3969 SH and hence was asked to surrender

0.3969 SH. As per the said declaration the family unit of the father of the petitioner consisted of himself, his wife, minor son (plaintiff) and a minor daughter. The declaration filed by the father of the petitioner is silent about the partition between him and his minor son. As rightly contended by the learned Assistant Government Pleader even if there was a partition between the petitioner and his father, petitioner would still be a member of his family unit in view of the definition of 'family unit' in Section 3(f) of the Act. In fact the apex court in **Begulla Bapi Raju etc. v. State of Andhra Pradesh**[1] held that a divided minor son is as much a member of his family unit as a joint son of his father. So petitioner cannot be heard to say that his father played fraud in showing his lands also in the declaration filed by him under the Act.

7) The assumption on the part of the petitioner that his father played fraud by surrendering his land cannot be accepted because, notice under Sec.10 (4) of the Act dated 14.06.1994, served on the father of the petitioner, shows that since he failed to furnish the particulars of the land to be surrendered in respect to the notice in Form-VI under Rule 7(1) of the Rules, issued to him on 22.4.1994, the lands detailed therein were proposed to be taken surrender of, and so if he has any objection thereto he may file them within 15 days of the receipt of that notice. As per the letter of the Mandal Revenue Officer dated 27.6.1994 addressed to the 3rd respondent the said notice was served on the father of the petitioner on 25.6.1994. Since no reply was received public notice under Form-VIII under Rule 7(4) of the Rules calling for objection for taking surrender of the lands mentioned therein was issued. Petitioner, who attained majority by the date of Form-VIII notice issued under Rule 7(4) on 23.11.1994, if he had any objection thereto, ought to have objected for taking surrender of his lands. He admittedly did not do so. So, finally, on 16.1.1995 3rd respondent accepted the surrender Ac.3-43 cents of land mentioned in the affidavit of the petitioner and directed the concerned Mandal Revenue Officer to take possession of those lands. Petitioner who admittedly visits his native place for Sankranti should have taken care to find out what lands are taken surrender of in the declaration filed by his father, whose family unit, to the knowledge of petitioner, was holding land in excess of the ceiling areas and should have objected to the taking over possession of his lands.

8) Having filed a petition for reopening of the case before the 3rd respondent, as seen from para 3 of the affidavit of the petitioner filed in support of this petition, petitioner should have sought the relief sought in this petition from the 3rd respondent himself. Having failed to do so, he cannot by invoking the jurisdiction of this Court under Art.226 of the Constitution in respect of a case covered by the provisions of the Act, stall further proceedings under the Act. His doing so is but an abuse of process of Court, warranting award of heavy costs to respondents.

9) Hence, the petition is dismissed with costs of Rs.1,500/-.

JUSTICE C.Y.SOMAYAJULU

12th September 2005.

BCS